

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On April 18, 2005 appellant, then a 35-year-old electrician, filed an occupational disease claim alleging a wrist condition due to his work using sawsalls and retracting cable cutters. On June 9, 2005 OWCP accepted appellant's claim for bilateral wrist strains. It later approved appellant's claim for a lesion of the ulnar nerve. On May 12, 2006 appellant underwent a right ulnar nerve decompression with medial epicondylectomy. OWCP paid appellant wage-loss compensation and medical benefits. The employing establishment separated appellant from its rolls effective November 16, 2006 due to his inability to perform assigned duties for medical reasons.

By decision dated July 13, 2011, OWCP suspended appellant's compensation as it found that he had refused to participate in vocational rehabilitation in good faith.

On July 26, 2011 appellant requested an oral hearing before an OWCP hearing representative. By letter dated October 6, 2011, to appellant's address of record, the Branch of Hearings and Review informed appellant that an oral hearing had been scheduled for his case on November 9, 2011 at 12:30 p.m. in Seattle, Washington. Appellant did not attend.

By decision dated December 1, 2011, OWCP's hearing representative found that appellant failed to appear at the November 9, 2011 hearing. She further noted that there was no evidence of record that he contacted OWCP either prior to or subsequent to the scheduled hearing to explain his failure to appear. Accordingly, the hearing representative found that appellant abandoned his request for a hearing.

LEGAL PRECEDENT

A claimant who has received a final adverse decision by OWCP may obtain a hearing by writing the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.² Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.³ OWCP has the burden of proving that it mailed to appellant and his representative a notice of a scheduled hearing.⁴

² 20 C.F.R. § 10.616(a).

³ *Id.* at 10.617(b). OWCP's regulations also provide that notice of a hearing should be mailed to the claimant and the claimant's authorized representative at least 30 days prior to the scheduled hearing. *Id.*

⁴ See *Michelle R. Littlejohn*, 42 ECAB 463, 465 (1991); see also *K.D.*, Docket No. 11-77 (issued August 18, 2011).

The authority governing abandonment of hearings rests with OWCP's regulations, which provides in pertinent part at section 10.622(f):⁵

"A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing...."

ANALYSIS

The record establishes that on October 6, 2011, in response to appellant's request for an oral hearing, the Branch of Hearings and Review mailed an appropriate notice of the scheduled hearing to appellant's address of record. The Board notes that the notice was sent to his address of record more than 30 days before the scheduled hearing date of November 9, 2011, and there is no contention that he did not receive it.⁶ The issue is thus, whether OWCP properly found that appellant had abandoned the hearing.

The record establishes that appellant failed to appear for the hearing scheduled for November 9, 2011 or request a postponement prior to that date. The record establishes that he failed to contact OWCP within 10 days after the scheduled hearing to explain his failure to appear. Although appellant argues on appeal that he could not attend the hearing as an urgent matter required his attention out of state, he did not make this argument in a timely fashion to OWCP either before or after the scheduled hearing. As appellant failed to appear for the oral hearing and did not establish good cause for his absence, the hearing representative properly found that appellant abandoned his request for an oral hearing.

CONCLUSION

The Board finds that OWCP properly determined that appellant abandoned his request for an oral hearing.

⁵ 20 C.F.R. § 10.622(f); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.16016(g) (October 2011).

⁶ It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises when it appears from the record that the notice was properly addressed and duly mailed. This is called the "mailbox rule." *Michele Lagana*, 52 ECAB 187 (2000); *Levi Drew, Jr.*, 52 ECAB 442 (2001).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 1, 2011 is affirmed.

Issued: November 26, 2012
Washington, DC

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board